

F I L E D

Clerk of the Superior Court

MAR 07 2008

By: B. TOM, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CITY OF SAN DIEGO,

Defendant.

Case No. GIC 821191

TENTATIVE DECISION

Judge: Hon. Charles R. Hayes
Dept.: 66

The Court has read and considered the evidence presented during the trial of this matter and has reviewed the case file and hereby finds as follows:

I.

SUMMARY OF FACTUAL BACKGROUND

On June 29, 1945 the State Park Commission granted the De Anza Mission Bay tidelands to the City of San Diego to be held in trust for the use and enjoyment of all of the citizens of the state.

In May 1951 the City entered into a 50-year Master Ground Lease (MGL) of these lands to commence on November 24, 1953 and end on November 23, 2003. The Master Ground Lease provided that the lessee develop a tourist and trailer park area. The MGL also provided that the leased premises were to be used only and exclusively for a tourist and trailer park with accompanying facilities, businesses and concessions with the written approval of the City Manager of San Diego.

TENTATIVE DECISION

1 City documents previously filed in this matter dating from the early 1960's describe the
2 tourist & trailer park (hereinafter referred to as "De Anza" or "De Anza Park") to be constructed to
3 consist of about 680 rental units or spaces, about 80% of which were intended to be occupied as
4 permanent residences. Initially, the City was to be paid 5% of the gross revenues generated by 544
5 permanent units and the remaining vacation units, in addition to the ancillary facilities including a
6 convenience store, beauty shop operations, slip and boat rentals, and gas and oil charges. The City
7 has operated De Anza through management companies for almost five decades with the percentage
8 of revenue paid to the City increasing to about 20% by 2003.

9 In 1978 the California Legislature enacted the Mobile Home Residency Law which
10 provided a comprehensive regulatory scheme governing the use and closure of mobilehome parks,
11 including State mandated benefits owed to residents and owners of mobilehomes to mitigate
12 economic harm upon closure of mobilehome parks.

13 In 1980 the State Lands Commission conducted a review of De Anza and found the
14 operation of the mobilehome park at De Anza was an improper use of State lands held in trust by
15 the City. The Commission advised the City that the permanent residential use of lands dedicated to
16 public use was unacceptable and that a phase-out of the improper use of De Anza was required.

17 In response to the proposed closure of De Anza in 1981, Assembly Bill 447 (the Kapiloff
18 Bill) was passed by the California Legislature. The Kapiloff Bill provided in part that while the De
19 Anza land was intended by the Legislature to be used for public recreation, it was wrongfully
20 developed with permanent sites for mobilehomes. Such use was not the intended public use and
21 was inconsistent with the 1941 grant of the land to the City. However, in balancing the hardship of
22 relocating tenants with current public need for expanded recreational lands on Mission Bay, the
23 legislature found that the tenants should not be forced to immediately relocate, but could be granted
24 a lengthy period of continued tenancy on certain conditions. The Kapiloff Bill provided that the De
25 Anza mobilehome park could remain in operation until November 23, 2003, notwithstanding its
26 improper use only if the City of San Diego enacted a resolution by February 1, 1982 adopting
27 specific findings required by the Bill. These findings included permitting the nonconforming

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1 permanent mobilehome sites at De Anza only until November 23, 2003, at which time the park
2 must close.

3 Almost one year before the February 1, 1982 deadline for City action, the City Manager
4 reported to the City Council that estimated relocation costs for the De Anza Park's residents in
5 2003 would be about \$7 million dollars. The City Manager projected total income to the City from
6 the mobilehome park under the then existing lease would be about \$9 million dollars by the year
7 2003. The City Manager provided the council with two alternatives: (1) Do not support the
8 Kapiloff Bill (AB 447), terminate the Lease in 1988 and pay relocation costs, or (2) support the
9 Kapiloff Bill with a renegotiated lease at a higher rate of return to the City and continue with the
10 existing mobilehome park at De Anza until November 23, 2003.

11 On January 22, 1982, less than one week before the deadline for City action on the Kapiloff
12 Bill, the City Manager in Report 81-476 recommended that the City Council execute a 10th
13 Amendment to the lease substantially increasing the De Anza rental income and consider a plan for
14 development of a hotel on the area of the leasehold not used by mobilehomes. The City Manager
15 advised that this plan "would generate revenues to the City on the order of \$50-\$60 million by the
16 year 2003."

17 On January 25, 1982, the City by resolution endorsed the Kapiloff Bill extending operation
18 of the mobilehome park until 2003 contingent upon execution of the 10th Amendment to the Master
19 Ground Lease substantially increasing De Anza Park's rental rates to 10%, 15% and eventually
20 20% of gross revenues during the final years of park operation.

21 II.

22 LEGISLATIVE FUNCTION ISSUE

23 At one point following the granting of the summary adjudication of issues, the City urged
24 the Court to refer the entire matter back to the City in order for the City to fulfill its duty to prepare
25 a relocation impact report and cause it to be reviewed for sufficiency and then mitigate the harm
26 caused by closure. At the time this Court declined to do so and this matter proceeded to trial.
27 Following the presentation of evidence at trial, the City in argument stated that the preparation and
28 evaluation of a relocation impact report are legislative functions under the Mobilehome Residency

1 Law and the corresponding provisions of the Government Code. Counsel for the City respectfully
2 argued the Court has improperly usurped this legislative function.

3 The Defendant's contention that a legislative function properly within the purview of the
4 City Council has been usurped by the Court is not well taken. The suggested solution of a referral
5 to the City for legislative determination of these issues is neither appropriate nor warranted under
6 the circumstances presented here.

7 In this case, the City occupies the position of owner – operator of De Anza. This Court
8 found that the City failed to prepare and timely serve the tenants with the required Relocation
9 Impact Report and had failed to take steps to mitigate the economic impact of closure on park
10 residents. It is the opinion of the Court that a referral to the City would result in an untenable
11 conflict of interest. The City would be required to prepare a report and submit it to itself so that it
12 could perform its impartial evaluation of (1) the sufficiency of its report and (2) the sufficiency of
13 its methods of mitigation of harm to park residents. The conflict of interest is clear. In fact, for the
14 past twenty-one years the City has taken the resolute and unyielding position that the no mitigation
15 whatsoever of economic hardship at De Anza is required. It is inconceivable that the legislative
16 intent in enacting the Mobilehome Residency Law would be accomplished by a simple referral to
17 the City to review its own report for sufficiency and mitigation when the City has in its Long Term
18 Leases with the tenants and by City Ordinance exempted itself from providing anything in
19 mitigation to De Anza homeowners. The City's position has persisted for over twenty years – up to
20 several days before the announced closing date of November 23, 2003, when the City passed an
21 ordinance exempting De Anza from the City's own ordinance and housing guidelines that were
22 required of every other owner/operator of a mobilehome park upon a change of use. Even after the
23 November 23, 2003 closing date, the City's attitude and conduct toward De Anza was not entirely
24 consistent with the intent of the legislature's mandated lessening of the burden of closure upon
25 residents and homeowners. Such conduct involved towing automobiles, demolishing the children's
26 playground, cutting down trees and vegetation and demolishing laundry facilities, among others.
27 Such conduct was not aimed at mitigating closure of the park but rather at making it so
28 uninhabitable that homeowners would of their own accord leave the premises. In summary, a

1 referral to the City to prepare a relocation impact report and to conduct an impartial review and
2 analysis of its own report to decide the required mitigation was and is not a viable option.

3 On the other hand the Court understands the City's position regarding mitigation. The
4 original lease for the development of De Anza in 1953 was for a finite period of fifty years. The
5 first permanent resident to occupy a mobilehome in De Anza and all who followed, knew or should
6 have known the park would not permanently remain open. Moreover, residents knew in 1980 when
7 the park was faced with imminent closure because of the State Lands Commission report and when
8 the Kapiloff Bill extended the operation of the park to November 23, 2003. Every homeowner
9 during the fifty years of its operation knew or should have known the park was not permanent.
10 Moreover, in the last 21 years every new and existing owner and every resident was on notice that
11 the park would close in November 2003. Because of the Long Term Lease Agreement, the
12 proposed November 2003 closure of the park was no surprise to anyone within the De Anza
13 community or San Diego at large. De Anza mobilehome park has been for decades a matter of
14 community interest in San Diego generally, certainly since the decision of the State Lands
15 Commission and the Kapiloff bill in 1980.

16 While the City's position that the owners and residents had years and years, if not decades,
17 to mitigate their own economic hardship caused by the prospect of De Anza's closure in November
18 2003 may otherwise have some logical basis, the California legislature in 1978 passed the
19 Mobilehome Residency Law which supersedes the City's position. The 1978 Mobilehome
20 Residency Law provides special protection and benefits to those who reside in mobilehome parks
21 that are not available to apartment residents or condominium residents and owners. As this Court
22 has previously found, the dictates of State Law trumps any decision of local government, whether
23 enacted by ordinance or City Charter. Accordingly, the Court found in ruling upon plaintiffs'
24 motion for summary adjudication that (1) De Anza is a mobilehome park and the Mobilehome
25 Residency Law is applicable to both the De Anza Park and the City (2) the City was under a
26 mandatory duty to comply with the Mobilehome Residency Law and (3) the City violated the
27 Mobilehome Residency Law by failing to prepare a Relocation Impact Report and serve lawful
28 Notices that complied with the Mobilehome Residency Law's timing and content requirements.

1 III.
2 SETTING OF TRIAL

3 The issues surrounding the City's failure to discharge its mandatory duty under the
4 Mobilehome Residency Law including mitigation of economic impact, were not issues subject to a
5 jury trial. Accordingly, the Court advised Counsel that this was not a damage trial but rather a
6 Court sitting in equity to determine what is necessary to mitigate the adverse economic effect of the
7 park's closure. To put it another way, the Court was called upon to decide what money and what
8 assistance would be necessary to help mitigate the impact of the park's closure upon the
9 homeowners and tenants. The Court had expected the required Relocation Impact Report or its
10 functional equivalent to be presented to the Court during trial. The Court recalls that back on
11 February 22, 2005, the Parties stipulated to the preparation of such a report. However, this case has
12 been viewed by counsel more as a case involving money damages and expert testimony was
13 directed more toward money damages than at mitigating the park's closure. In retrospect, the Court
14 understands the approaches the Parties took in the presentation of evidence, especially in view of
15 how far apart the Parties were and are regarding both the legal and factual issues.

16 IV.
17 MITIGATION OF ECONOMIC HARM

18 Unfortunately, the legislature in enacting the controlling section of the Mobilehome
19 Residency Law and corresponding provisions in the Government Code failed to provide any
20 guidance regarding the meaning of the language used or how they should be interpreted. At one
21 point the Court noted that it had not received a legislative history to assist in interpreting the
22 legislative intent and was advised by both Counsel there was really nothing available that would aid
23 the Court.

24 V.
25 STATUTORY INTERPRETATION

26 "Mitigation" Limited by the "Cost of Relocation"

27 The following statutes and the interpretation thereof are before the Court. Civil Code
28

1 §798.56(g) and (h) provide that,

2
3 (g) Change of use of the park or any portion thereof, provided:

4 (1) The management gives the homeowners at least 15 days' written notice that the
5 management will be appearing before a local governmental board, commission, or
body to request permits for a change of use of the mobilehome park.

6 (2) After all required permits requesting a change of use have been approved by the
7 local governmental board, commission, or body, the management shall give the
homeowners six months' or more written notice of termination of tenancy.

8 If the change of use requires no local governmental permits, then notice shall be
9 given 12 months or more prior to the management's determination that a change of
10 use will occur. The management in the notice shall disclose and describe in detail the
nature of the change of use.

11 (3) The management gives each proposed homeowner written notice thereof prior to
12 the inception of his or her tenancy that the management is requesting a change of use
before local governmental bodies or that a change of use request has been granted.

13

14 (h) The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the
15 Government Code shall be given to the homeowners or residents at the same time
16 that notice is required pursuant to subdivision (g) of this section. "

17 Government Code §65863.7 provides in part that, "Prior to the conversion of a mobilehome
18 park to another use . . . or prior to closure of a mobilehome park or cessation of use of the land as a
19 mobilehome park, the person or entity proposing the change in use shall file a report on the impact
20 of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park
21 to be converted or closed. In determining the impact of the conversion, closure, or cessation of use
22 on displaced mobilehome park residents, the report shall address the availability of adequate
23 replacement housing in mobilehome parks and relocation costs." [Government Code §65863.7(a)]

24 State law contained within the above statutes require the park owner-operator proposing to
25 close a mobilehome park to prepare a Relocation Impact Report which will then be submitted to the
26 local legislative body charged with determining whether the proposed measures were adequate to
27 mitigate the economic impact of the park's closure on the park residents.

28 Government Code §65863.7(e) obligates the entity or person proposing the change of use or

1 park closure "...to take steps to mitigate any adverse impact of the conversion...on the ability of
2 displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps
3 required to be taken to mitigate shall not exceed the reasonable costs of relocation..."

4 The statutes provide no other guidance for the meaning of the terms "mitigate the economic
5 impact" or "costs of reasonable relocation". There is no legislative history available to provide
6 guidance as to the meaning of these terms.

7 Plaintiffs provide letters from two retired State Senators who are experts in the area, Senator
8 Dunn and Senator Tennyson. Their opinions are supportive of plaintiffs' "in place" appraisal
9 approach. The Court received these documents into evidence because of the dearth of guidance
10 regarding the statutory meaning and legislative intent. However, the Court does not give
11 substantial weight to opinions set forth in these letters notwithstanding the credentials of the
12 authors. The Senators were not designated as retained or percipient expert witnesses and were not
13 deposed and have not been subject to cross-examination regarding the basis for their opinions.
14 Further, they did not testify at trial. The letters are interesting from a historical perspective but
15 were not given any weight by this Court as to the truth of the opinions stated therein.

16 Plaintiffs also cite the Court to Municipal Ordinances enacted in various cities such as
17 Laguna, Huntington Beach, Orange, Santa Clarita among others. These ordinances generally
18 provide that the park owner must compensate residents for the fair market value of the
19 mobilehomes appraised "in place" upon park closure.

20 These municipalities in enacting procedures and standards for reasonable relocation of park
21 residents in the case of a park closure were attempting to comply with the mandates of the
22 Mobilehome Residency Law and the Government Code. Most of the ordinances operate within the
23 context of closure of a park by a private property owner who intends to develop the land upon
24 which the park rests to its economic highest and best use. Since the original development of most
25 parks, the fair market value of the land surrounding most mobilehome parks has risen
26 exponentially. (See The La Mesa Terrace Mobile Home Relocation Impact Report, Exhibit 174.)

27 It would appear that the various city ordinances are an attempt by the Cities to provide a
28 degree of fairness and equity to the ordinary situation where the park owner intends to redevelop

1 the land to a higher use which would result in a substantial profit to the owner while at the same
2 time, unless mitigated, result in the destruction of the value of the mobilehomes therein and a
3 difficulty of the mobilehome owner to find adequate replacement housing. (See Exhibit 97 -
4 Laguna Beach Municipal Code §1.11.010(b)(12).)

5 These ordinances were enacted pursuant to the Mobilehome Residency Law and generally
6 provide that the homeowners be compensated for the loss of their homes using the fair market value
7 accordingly to an "in place" appraisal method. For example, Laguna Beach provides that the
8 mobilehome loss is to be valued using an "estimate of the fair market value of each mobilehome
9 and all associated fixed property that cannot be relocated to a comparable mobilehome park. The
10 fair market value is to be determined by considering the mobilehomes in their current locations
11 assuming the continuing of the mobilehome park in a safe, sanitary and well maintained condition
12 with competitive lease rates.

13 Similar provisions for determining fair market value have been enacted by many
14 municipalities, including San Juan Capistrano, Huntington Beach and Santa Rosa. For example, the
15 Huntington Beach ordinance provides that "if the mobilehome cannot be relocated...within 20
16 miles...the 'reasonable cost of relocation shall include the cost of purchasing the mobile/
17 manufactured home of a displaced homeowner...at its in place value' consistent with California
18 Government Code §65863.8(e). [See plaintiffs' Exhibit 99, City of Huntington Beach Ordinance
19 §234.08] It further provides that "at no time shall the value of the mobile/manufactured home be
20 less than the replacement cost of a new home of similar size and square footage."

21 These municipal ordinances form a substantial part of the basis for the testimony of
22 plaintiffs' experts who opine that fair market value is to be determined by appraisal "in place"
23 which in effect includes a valuation of the real property, i.e. the land upon which the mobilehome
24 rests. These ordinances define "reasonable costs of mitigation" and apply that definition to park
25 closures in their municipalities, just as San Diego provides its own and different definition of the
26 term.

27 These ordinances have not been the subject of any appellate review. There is no reported
28 case authority passing on these ordinances' definition of relocation as an "in place" appraisal of fair

1 market value of the mobilehome as being required to meet the state requirements. Further, the
2 constitutionality of requiring a park owner to pay not only fair market value of the structure but also
3 an additional amount based on the admittedly erroneous hypothetical assumption that the park will
4 remain open indefinitely when it is a given that the park will soon close has not been reviewed.

5 Testimony presented at trial showed that different municipalities had enacted differing
6 approaches to the mitigation. Not all have required valuation to be based upon an "in place"
7 appraisal. For example, other municipal jurisdictions such as Anaheim and San Diego have
8 differing approaches to mitigation. Anaheim limits the relocation costs to the actual costs incurred
9 to move a mobilehome within a 125 mile radius while San Diego provides a specified rent
10 differential.

11 The Court finds that the approach of other municipalities are not in any respect binding on
12 the City of San Diego nor do they necessarily provide insight into the appropriate definition of
13 "reasonable costs of mitigation" required to meet State standards. The Court rejects Plaintiffs'
14 argument that an "in place" appraisal of fair market value is required to satisfy the State law
15 mandate of mitigation of economic hardship resulting from the closure of De Anza. The term
16 mitigation as used in the statute means to lessen or minimize the severity of economic impact of
17 park closure. In this statutory scheme, the term does not mean or require the payment of just
18 compensation in the form of fair market value as would be required in a condemnation proceeding.
19 Further the provisions of Title 25 of the California Code of Regulations, section 6000, et seq., and
20 in particular section 6112 regarding mobilehomes as well as 6054 through 6139 are inapplicable to
21 the instant case. Title 25 provides relocation formulas applicable to the California Relocation
22 Assistance Law found in Government Code section 7260, et sec., which is not in issue in this case.

23 The Court further finds that San Diego Mobilehome Park Discontinuance and Tenant
24 Relocation Ordinance is applicable to De Anza notwithstanding the City's attempt to exempt De
25 Anza by ordinance and contract. (See San Diego Municipal Code §143.0610 and §143.0615 and
26 Long Term Lease Agreements.) The Court finds defendant City of San Diego is required to
27 comply with the same ordinance as other park operators in similar situations within the City.

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1 The City is ordered to prepare a Relocation Impact Report addressing the mitigation of the
2 park residents' economic hardship resulting from the closure of the park. Plaintiffs in the First
3 Cause of Action in their 3rd Amended Complaint pray for injunctive relief ordering the City of San
4 Diego to fully comply with the Mobilehome Residency Law. The Court hereby grants plaintiffs'
5 prayer for relief and orders the City of San Diego to fully comply with the California Mobilehome
6 Residency Law as set forth in this Decision and Order After Decision.

7 The City of San Diego has an ordinance aimed at dealing with the issue of mobilehome park
8 closure relocation benefits that apply to mobilehome park owners. The City Housing Commission
9 spent years of hearings, review of input from the public and private individuals and groups. After
10 various approaches were discussed, adopted and amended, the Commission's recommendations
11 were adopted by the City to have application to all owners of mobilehome parks. The City
12 presumably viewed the existing ordinance as fair and reasonable to deal with these difficult and
13 complex issues. The City cannot now say the ordinance does not apply equally to the City.

14 The Court finds no compelling reason to accept the City's attempt to unilaterally exempt
15 itself from the statutory mandate of relocation benefits set forth in Civil Code section 798.56. The
16 City collected millions of dollars of rents from De Anza for at least two decades following City
17 staff reports advising the City that park tenants were entitled to substantial relocation benefits. The
18 City's attempt by ordinance shortly before the date of the proposed closure to exempt De Anza and
19 the City from the State mandated mitigation of park closure is ineffective as a matter of law. The
20 State statutes' mandates cannot be overridden by local ordinance.

21 The Court hereby finds the Relocation Standards and Procedures of the San Diego Housing
22 Commission (hereafter Housing Commission Guidelines or Guidelines) as adopted by the City of
23 San Diego apply to the closure of De Anza Park. See Trial Exhibit 104, Policy - Mobile Home
24 Park Development, attachment 1, P.O. 300.401 Effective 10/3/95. These Guidelines are intended
25 to be the fiscal standard against which relocation plans are to be measured.

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1 The Court in interpreting these Guidelines to determine mitigation of economic hardship
2 finds the general approach set forth in the Relocation Impact Report prepared by Overland Pacific
3 and Cutler (O.P.C.) in the closure of the La Mesa Terrace Mobile Home Park to constitute a
4 generally fair and reasonable approach in determining of mitigation of economic hardship which
5 this Court adopts except as otherwise found herein. The La Mesa report attempted to use the San
6 Diego Housing Commission Guidelines, among other things, to determine the reasonable amount
7 to be paid to homeowners and residents of the La Mesa Park in connection with its proposed
8 closure.

9 De Anza consists of (1) resident non-owners who rent or sub-lease their homes from an
10 owner who in turn pays rent for the space, (2) resident owners who live full time at De Anza or who
11 live part time by using their mobilehome as a second or vacation home and pay rent for the space
12 and (3) non-resident owners who rent or sublease their mobilehomes to others.

13 Non-owner renters. The Court finds the mitigation approach to non-owner renters used in
14 the La Mesa Relocation Impact report' to be fair, reasonable and consistent with the intent of the
15 legislative and sufficient to satisfy the Mobilehome Residency Law's mandate regarding mitigation.
16 The Court adopts this method of mitigation of economic impact as applicable to non-owner renters
17 on the closure of De Anza.

18 Resident owners and non-resident owners where mobilehome can be relocated. The
19 Housing Commission Guidelines in section 1(a) state that where it is feasible to relocate the
20 mobilehome, the "homeowner" shall be reimbursed the actual cost of relocation within certain
21 ranges that are set forth. In addition, under the Guidelines, appurtenances to mobilehomes that are
22 to be moved entitle the homeowner to an additional amount up to a total of \$1,000.00. The
23 Guidelines do not distinguish between resident owners and non-resident owners. It is the intent of
24 the Court that the Relocation Impact Report the City is to prepare shall apply the same Guideline
25 standard to resident owners or non-resident owners.

26 The Court finds these amounts provide fair and reasonable mitigation of economic hardship
27 of actual costs for relocation where it is feasible to relocate a mobilehome. The Relocation Impact
28 Report to be prepared for this Court and the Special Masters shall account for cost of living

1 increases in a manner similar to La Mesa Terrace Report in adjusting the maximum and minimum
2 amounts of reimbursement.

3 Resident owners where it is not feasible to relocate the mobilehome. The Housing
4 Commission Guideline section 1(b) deals with situations where a mobilehome cannot be relocated.
5 In such situations, the Guidelines are intended to apply only to resident owners and not to non-
6 resident owners. The Guidelines state that the park owner shall provide "residence" (sic)
7 "reasonable relocation expenses" defined as a rent differential between the "current space rent" and
8 "rent for a comparable apartment unit" for the period of forty-eight 48 months. The definition of
9 reasonable relocation expenses is not circumscribed by any minimum or maximum amount as it is
10 in section 1(a).

11 The Guidelines further define reasonable relocation expenses to include the actual cost of
12 moving expenses for personal property up to a maximum of one thousand dollars (\$1000.00) per
13 unit. The homeowner residents are further entitled to the proceeds from sale, if any, of the
14 mobilehomes that cannot be moved.

15 The Court adopts the use of these Guidelines, and finds resident mobilehome owners,
16 whether permanently residing at De Anza or temporarily residing at De Anza as in the case of a
17 second home, where it is not feasible to move the motor home, are entitled under the Guidelines to
18 the difference between current space rent and rent for a comparable apartment unit for the period of
19 48 months. The term comparable unit means one of comparable size situated in a comparable local,
20 that is, located in a beach community within the County of San Diego. No maximum amount
21 applies to the rent differential except as is provided by the marketplace. Further, the Court rejects
22 the opinion of Defendant's expert witness that a city or county wide average should be used to
23 determine the rental cost of a comparable apartment. This opinion is inconsistent with the plain
24 meaning of the words of the guideline which refers to a "comparable apartment."

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1 The Court declines to adopt the La Mesa Relocation Report's inclusion of mortgage
2 payments to determine rent differential. The mortgage payments of De Anza residents, if any, shall
3 not be included in calculating the rent differential. Mortgage payments are continuing obligations
4 of the resident owner based upon a promissory note, whether purchase money, fixed subordinate or
5 home equity, enforceable at law or otherwise.

6 Non-resident owners who rent or sublease mobilehomes which are not feasible to relocate.

7 The Mobilehome Residency Law does not address mitigation for owners of mobilehomes who rent
8 or sublease their mobilehomes to others. The San Diego Guidelines likewise do not provide
9 mitigation of hardship to owners who rent to others in cases where the mobilehome cannot be
10 relocated. Even a municipality cited by plaintiff's exempts mitigation payments to such
11 individuals. (See Exhibit 99, Huntington Beach Zoning and Subdivision Ordinance, section
12 234.04(D)). The non-resident owner is more properly classified as an investor and not a person the
13 legislature intended to protect in enacting the Mobilehome Residency Law. Any person purchasing
14 a De Anza mobilehome knew or should have known that the park had a date certain for closure and
15 that the stream of rental income would end upon the closure of the park in 2003. This is true for
16 investors who purchased a mobilehome in the 1960s, 1970s, or the 1980s. This is especially true
17 for investors who acquired their mobilehome following the Kapiloff Bill and the City's extension of
18 the park's operation until November 23, 2003. Investors who purchase an asset providing a stream
19 of income for a finite period of time presumably take into account the amount of income to be
20 received in determining a reasonable rate of return for their investment. The Mobilehome
21 Residency Law was not intended to mitigate an investor under these circumstances.

22 VI.

23 RELOCATION IMPACT REPORT

24 The City shall cause to be prepared a Relocation Impact Report for submission to special
25 masters for review consistent with the accompanying Order After Decision.

26
27 This Tentative Decision shall become the Statement of Decision unless a party files a timely
28 request for a formal Statement of Decision. If a formal Statement is requested either party may

1 serve and file a proposed Statement of Decision consistent with Code of Civil Procedure §632 and
2 the California Rules of Court. Objections to the proposed Statement of Decision shall be pursuant
3 to the Code and Rules of Court.

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5 IT IS SO ORDERED.

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9 Dated: MAR 07 2008

CHARLES R. HAYES

CHARLES R. HAYES
Judge of the Superior Court